

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MUSIC CITY METALS CO., INC.)	
)	
Plaintiff,)	
)	Civil No. _____
vs.)	Judge _____
)	Magistrate Judge _____
JUSTIN LIN, MODERN)	
INTERNATIONAL CORP., and)	
MODERN CO., LTD.)	<u>JURY TRIAL DEMANDED</u>
)	
Defendants.)	

COMPLAINT

Music City Metals Co., Inc. (“MCM”) files this complaint for trademark infringement, trademark counterfeiting, unfair competition and breach of contract against Justin Lin (“LIN”), Modern International Corp. (MODERN CORP.), and Modern Co., Ltd. (“MODERN LTD”) (collectively “DEFENDANTS”) and states as follows:

I. PARTIES

1. MCM is a Tennessee corporation having its principal place of business at 2633 Grandview Avenue, Nashville Tennessee 37211.
2. Upon information and belief, LIN is a resident of the State of Washington having an office at 1545 NW Market Street, #817, Seattle Washington 98107 and is the active agent behind the actions of MODERN alleged in this Complaint.
3. Upon information and belief,

a. MODERN LTD. is a company doing business at 1545 NW Market Street, #817, Seattle Washington 98107. MODERN does business as many companies all having an address of 1545 NW Market Street, #817, Seattle Washington 98107 including Pay and Pack, Modern Barbeque Parts (MBP), Home Direct, Parts Zone BBQ Expert, Maltese, and BBQ Factory.

.b. LIN is an individual doing business at 1545 NW Market Street, #817, Seattle Washington 98107.

c. MODERN CORP. is a company doing business at Dos Vientos Ranch, 5158 Via Pisa, Thousand Oaks, California 91320. MODERN Corp. does business as many companies including Pay and Pack, Modern Barbeque Parts (MBP), Home Direct, Parts Zone BBQ Expert, Maltese, and BBQ Factory. MODERN CORP. has a website at www.bbqparts.cn. MODERN CORP lists having warehouses and office in the United States.

II. BACKGROUND

4. MCM has sold after market and replacement parts for grills including home gas grills since at least as early as 1989.

5. MCM sells these after-market and replacement parts under the MCM and MUSIC CITY METAL trademarks. MCM is the owner of trademarks and trademark registrations containing MCM and MUSIC CITY METALS. The trademark MCM has been used by MCM since at least as early as 2005 and is registered as U.S. Trademark Registration No. 4,196,254 (attached hereto as Exhibit 1). The trademark MUSIC CITY METALS has been used by MCM since at least as early as 1989 and is registered as U.S. Trademark Registration No. 3,995,498 (attached hereto as Exhibit 2). MCM has developed its own parts numbers for the parts that it sells consumers.

6. MCM has sold millions of dollars' worth of goods displaying the MCM and MUSIC CITY METALS trademarks. MCM has expended hundreds of thousands of dollars promoting the

MCM and MUSIC CITY METALS trademarks.

7. MCM's use of the MCM and MUSIC CITY METALS trademarks has been national.

As a result of this extensive use of the MCM and MUSIC CITY METALS trademarks, MCM has developed significant and extensive good will in the MCM and MUSIC CITY METALS trademarks nationally.

8. MCM has also developed artwork of its replacement parts. This artwork has been protected by U.S. Copyright Registration No. TX 7-268-508 (Exhibit 3 hereto) (hereinafter "COPYRIGHTED WORKS").

9. MCM has an online click agreement that allows users to license certain of MCM's intellectual properties including its trademark and copyrights. LIN and MODERN executed this agreement on February 20, 2012(Exhibit 4 hereto).

10. LIN and MODERN sell replacement parts that compete with MCM's products using the MCM trademark, the MUSIC CITY METALS trademark, and MCM's parts numbers. LIN and MODERN have also used photos and drawings of MCM's products to sell their own products. LIN and MODERN have used copies of MCM photos and drawings to sell products from LIN and MODERN.

11. LIN and MODERN sell replacement parts that compete with MCM's products using the COPYRIGHTED WORKS and have copied the COPYRIGHTED WORKS.

III. JURISDICTION AND VENUE

12. Subject matter jurisdiction for the trademark infringement, trademark counterfeiting, unfair competition, and copyright claims exists with respect to the claims asserted in this Complaint

pursuant to 28 U.S.C. §§ 1331 and 1338. Subject matter jurisdiction for the breach of contract claims asserted in this Complaint exists pursuant to 28 U.S.C. §1337(a) because the Court has jurisdiction over the trademark infringement, trademark counterfeiting, unfair competition, and copyright claims. Venue is proper in this Court in accordance with 28 U.S.C. §1339 because LIN and MODERN entered into an agreement with a Tennessee company, took materials off MCM's website in Tennessee, made copies of photos and drawings from MCM catalogs originating in Tennessee, a substantial portion of the allegations asserted herein occurred in Tennessee, and because jurisdiction over LIN and MODERN can be had in this state.

IV. PERSONAL JURISDICTION

13. The Court has personal jurisdiction over DEFENDANTS because DEFENDANTS engage in "business" in the State of Tennessee within the meaning of the Tennessee Long Arm Statute, Tenn. Code Ann. § 20-2-214(a)(1). Similarly, the exercise of personal jurisdiction over DEFENDANTS comports with due process requirements of the United States Constitution because: (a) DEFENDANTS has purposefully established "minimum contacts" with the State of Tennessee, and (b) the exercise of personal jurisdiction over DEFENDANTS will not offend the traditional notions of fair play and substantial justice. DEFENDANTS entered into the Agreement attached hereto as Exhibit 5 with MCM, a Tennessee Corporation. DEFENDANTS' infringements have occurred on various national websites such as Amazon.com and eBay.com. DEFENDANTS also sell products at their nationally available website located at www.bbqparts.cn. By selling their products on these national websites, DEFENDANTS have purposefully sought to advertise and sell their products nationally including in this state.

CAUSES OF ACTION

Count I - Trademark Infringement

14. MCM realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

15. DEFENDANTS have marketed and sold products and continue to market and sell products using MCM's MCM and MUSIC CITY METALS trademarks that are not MCM products. Such conduct is in violation of the February 20, 2012 agreement and is without permission from MCM.

16. MCM's model numbers are associated by consumers with MCM's products. While MCM's parts are after-market products, MCM's parts numbers are not the parts numbers used by grill manufacturers. DEFENDANTS' use of MCM's model numbers is without permission. Defendants regularly use MCM, MUSIC CITY METALS, or MCM's distinctive part numbers further adding to the likelihood of confusion.

17. DEFENDANTS' acts are likely to create confusion, mistake, or deception insofar as the purchasing public and others will mistake DEFENDANTS' services as being associated with or sponsored by MCM.

18. DEFENDANTS are thus in violation of 15 U.S.C. §1114 for the registered marks and of 15 U.S.C. §1125(a) for all of the trademarks.

19. Such acts by DEFENDANTS cause MCM irreparable harm for which MCM is entitled to a temporary restraining order, preliminary injunction, and permanent injunction under 15 U.S.C. §1116.

Count II - Trademark Counterfeiting

20. MCM realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

21. DEFENDANTS's use of MCM's MCM and MUSIC CITY METALS trademarks on products that are not MCM products is counterfeiting in violation of 15 U.S.C. §1116(d). Such conduct is aggravated by its violation of the February 20, 2012 agreement and its use of MCM's distinctive product numbers.

22. Such acts by DEFENDANTS warrant the relief set forth under 15 U.S.C. §1116(d) and 15 U.S.C. §1117(c).

Count III - Unfair Competition.

23. MCM realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

24. DEFENDANTS have passed off their goods or services to the public as if they are the goods of MCM. Further, Defendants' use of actual MCM artwork to sell products not represented by the artwork aggravates the passing off.

25. DEFENDANTS have acted with an intent to deceive the public as to the source of their goods and services, and the public has, in fact, been confused or deceived as to the true source of the DEFENDANTS' services and the rights and authority of their organizations.

26. DEFENDANTS' unlawful usurpation of MCM's rights and property constitutes unfair competition under the Lanham Act and the statutory and common law of Tennessee.

Count IV-Breach of Contract

27. MCM realleges and incorporates by reference each of the numbered paragraphs above

as if fully set forth herein.

28. DEFENDANTS have infringed the Trademarks and Copyrights of MCM in violation of the February 20, 2012 agreement.

29. MCM is entitled to recovery of damages suffered by it.

Count V-Copyright Infringement

30. MCM realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

31. DEFENDANTS' use of the Copyrighted Works is without the permission of MCM and in violation of the February 20, 2012 agreement. That the copies of the Copyrighted Works are identical to MCM's and are therefore substantially similar. That these are exact copies of the Copyrighted Works indicate that DEFENDANTS had access to MCM's copyrighted works.

32. DEFENDANTS have infringed the copyrights in the Copyrighted Works in violation of 17 U.S.C. §501 *et seq.* The Copyrighted Works are registered and owned by MCM.

33. MCM is entitled to injunctive relief under 17 U.S.C. §502, impoundment under 17 U.S.C. §503, damages including statutory damages under 17 U.S.C. §504, and costs and fees 17 U.S.C. §505.

WHEREFORE, MCM respectfully prays that this Court grant it the following relief:

A. That the Court enter injunctive relief, ordering that DEFENDANTS, as well as their officers, agents, servants, employees, attorneys and all others in active concert or participation with them, are enjoined and restrained from:

1. Engaging in any conduct that infringes the "MCM" and "MUSIC CITY

METALS" trademarks;

2. Offering any products using any mark containing "MCM" and/or MUSIC "CITY METALS" and/or MCM's product numbers;
3. Engaging in any advertising that tends in a false or misleading manner to associate the DEFENDANTS' goods and services with MCM or with MCM's goods and services;
4. Engaging in any advertising that tends to adversely affect the public's perception of MCM or MCM's goods;
5. Uses any MCM artwork.

B. That the Court enter preliminary and permanent injunctive relief ordering DEFENDANTS, in accordance with 15 U.S.C. § 1116 and 17 U.S.C. §502, to file a verified report with this Court within thirty (30) days of the Court's entry of injunctive relief, specifying in detail the manner and form in which DEFENDANTS have complied with the injunction and order of this Court.

C. An award of statutory damages for trademark counterfeiting under 15 U.S.C. §1117(c) and/or copyright infringement under 17 U.S.C. §504.

D. An impoundment and seizure of DEFENDANTS' products that infringe MCM's trademarks and copyrights.

E. An accounting of profits;

F. A trial by jury as to all issues; and

G. That the Court grant such further relief to which MCM is entitled.

VERIFICATION

Hugh M. Richardson, under penalty of perjury of the laws of the United States, states: That he is President of Music City Metals Co., Ltd., that he has read, is familiar with, and has personal knowledge of the contents of the foregoing Verified Complaint; and that to the best of his knowledge, information, and belief the allegations thereof are true and correct.

Executed this 20th day of October, 2012, in Nashville, Tennessee.

Hugh M Richardson

Respectfully submitted,



Edward D. Lanquist, Jr. (BPR 13303)
Waddey & Patterson, P.C.
Suite 500 Roundabout Plaza
1600 Division Street
Nashville TN 37203
(615) 242-2400

Attorneys for Plaintiff Music City Metals, Co., Inc.

EXHIBIT 1

United States of America
United States Patent and Trademark Office

MCM

Reg. No. 4,196,254

MUSIC CITY METALS CO., INC. (TENNESSEE CORPORATION)
2633 GRANDVIEW AVENUE

Registered Aug. 28, 2012

NASHVILLE, TN 37211

Int. Cl.: 35

FOR: DISTRIBUTORSHIP SERVICES IN THE FIELD OF GAS GRILL PARTS; NAMELY, VALVES, CONTROL KNOBS, HEAT INDICATORS, IGNITOR COMPONENTS, LID HANDLES, ACCESSORIES, ROTISSERIE HOUSINGS, REGULATORS, HOSES, GRILL PLUMBING, NATURAL GAS GRILL POSTS, WARMING RACKS, GASLIGHT PARTS AND SUPPLIES, HOT PLATES, BURNERS AND VENTURIS, COOKING GRIDS, AND ROCK GRATES/HEAT PLATES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-2005; IN COMMERCE 1-1-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 76-710,415, FILED 1-31-2012.

LOURDES AYALA, EXAMINING ATTORNEY



David J. Kappos

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See 15 U.S.C. §§1058, 1141k.* If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See 15 U.S.C. §§1058, 1141k.* However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See 15 U.S.C. §1141j.* For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

EXHIBIT 2

United States of America

United States Patent and Trademark Office

MUSIC CITY METALS

Reg. No. 3,995,498

MUSIC CITY METALS CO., INC. (TENNESSEE CORPORATION)
2633 GRANDVIEW AVENUE
NASHVILLE, TN 37211

Int. Cl.: 35

FOR: DISTRIBUTORSHIP SERVICES IN THE FIELD OF AS GRILL PARTS; NAMELY, VALVES, CONTROL KNOBS, HEAT INDICATORS, IGNITOR COMPONENTS, LID HANDLES, ACCESSORIES, ROTISSERIE HOUSINGS, REGULATORS, HOSES, GRILL PLUMBING, NATURAL GAS GRILL POSTS, WARMING RACKS, GASLIGHT PARTS AND SUPPLIES, HOT PLATES, BURNERS AND VENTURIS, COOKING GRIDS, AND ROCK GRATES/HEAT PLATES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-30-1989; IN COMMERCE 1-30-1989.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MUSIC CITY" APART FROM THE MARK AS SHOWN., APART FROM THE MARK AS SHOWN.

SER. NO. 76-705,850, FILED 12-30-2010.

SUE LAWRENCE, EXAMINING ATTORNEY



David J. Kopps

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
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NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

EXHIBIT 3

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Acting Register of Copyrights, United States of America

Registration Number
TX 7-268-508

Effective date of
registration:
August 16, 2010

Title

Title of Work: Gas Grill Replacement Parts

Previous or Alternative Title: Illustrated Gas Grill Parts Search

Completion/Publication

Year of Completion: 2010

Date of 1st Publication: March 1, 2010

Nation of 1st Publication: United States

Author

■ **Author:** Music City Metals Company, Inc.

Author Created: text

Work made for hire: Yes

Domiciled in: United States

Copyright claimant

Copyright Claimant: Music City Metals Company, Inc.

2633 Grandview Avenue, Nashville, TN, 37211, United States

Limitation of copyright claim

Material excluded from this claim: text

Previous registration and year: TX-5-258-606 2000

New material included in claim: text

Rights and Permissions

Organization Name: Waddey & Patterson, P.C.

Name: I. C. Waddey, Jr.

Email: icw@iplawgroup.com

Telephone: 615-242-2400

Address: 1600 Division Street

Ste. 500

Nashville, TN 37203 United States

Certification

Name: I. C. Waddey, Jr.

Date: August 12, 2010

Applicant's Tracking Number: N5778



Registration #: TX0007268508

Service Request #: 1-475671838



Waddey & Patterson, P.C.
I. C. Waddey, Jr.
1600 Division Street
Ste. 500
Nashville, TN 37203 United States

EXHIBIT 4

From: modernjustin@gmail.com
Subject: license
Date: February 20, 2012 9:40:30 AM CST
To: samrutherford@musiccitymetals.net
Reply-To: modernjustin@gmail.com

customertype: new customer
name: Justin Lin
company: Modern Co., Ltd.
phonenumbers: 12062049633
address1: 1545 NW Market St.
address2: 817
citystatezip: SEATTLE, WA 98107
site:
agreement: I Agree.



Music City Metals

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If you do not have a password, you may apply for one after reading and agreeing to the License Agreement below.

Music City Metals (MCM) licenses the use of its [on-line catalog](#) and database to its full-line customers (defined below) as a diagnostic tool and marketing aid to facilitate the sale of its gas grill replacement parts and other products.

If you are, or wish to become, a full-line MCM customer, you may download the on-line catalog from this site. After you have accepted the terms of the license using the form below, you will be sent a password by e-mail that will allow you to download the catalog and related data files. Do not submit this form unless you intend to become a reseller of Music City Metals gas grill parts and to use the documents for marketing purposes. Please use the [contact form](#) to request a catalog, request a credit application, or for other inquiries.

License Agreement, Music City Metals Company, Inc.

Notice: This license agreement is a contract. By indicating your agreement below, you accept the terms and conditions of this agreement.

Music City Metals Company, Inc. (hereafter "MCM") licenses use of the digital files available for downloading on this site, including but not limited to html code, php code, data tables, scripts, and images (hereafter the "DOCUMENTS") to you only upon the condition that you accept all the terms contained in this license agreement. Please read the terms carefully before DOWNLOADING our DOCUMENTS. MCM RETAINS THE RIGHT TO REVOKE YOUR LICENSE AT ANY TIME AND FOR ANY REASON OR FOR NO REASON. IF YOUR LICENSE IS REVOKED, YOU AGREE TO DISCONTINUE USE OF THE LICENSED DOCUMENTS, TO DESTROY ALL COPIES OF THE DOCUMENTS AND TO RETRIEVE AND RETURN ALL COPIES OF THE DOCUMENTS THAT ARE NOT DESTROYED.

Your or your agents' use of the DOCUMENTS in any manner will indicate your assent to the terms of this license. By downloading, copying, installing, or otherwise using the DOCUMENTS, you agree to be bound by the terms of this license. If you do not agree, you must refrain from downloading the DOCUMENTS.

The DOCUMENTS are licensed, not sold or given. While MCM continues to own the DOCUMENTS, this license grants you certain rights to use the DOCUMENTS after your acceptance of the license.

Definition of FULL-LINE CUSTOMER

The DOCUMENTS are to be used only by the FULL-LINE CUSTOMERS of MCM. A FULL-LINE CUSTOMER is an entity for whom MCM is the exclusive, or nearly exclusive, supplier, either directly or through another party, of gas grill parts and barbecue accessories. In all cases, MCM shall be the sole judge of whether or not an entity is a FULL-LINE CUSTOMER of MCM.

If you qualify as FULL-LINE CUSTOMER:

You may:

- Install the DOCUMENTS on a hard disk or other electronic storage device on a single computer or on a computer connected to a local area network.
- Copy the DOCUMENTS for backup purposes.
- Transfer the DOCUMENTS to another party, provided the other party agrees to the terms of this license, and you obtain from the other party a signed copy of this agreement.
- Post the DOCUMENTS, with the exception of data tables, to a publicly viewable http internet site.
- Allow the public to view the DOCUMENTS on your premises with an html browser.
- Modify or add to the DOCUMENTS for the purpose of facilitating the sale of MCM products.

You may not:

- Use copy or transfer the DOCUMENTS, in whole or in part, except as provided in this license agreement.
- Rent, lease, or loan the DOCUMENTS.
- Use the DOCUMENTS in any way if you are deemed not to be a FULL-LINE CUSTOMER of MCM, as defined above.
- Use, modify, or add to the DOCUMENTS for any purpose other than facilitating the sale of MCM product.
- Use the DOCUMENTS to sell any products other than those purchased from MCM.

Disclaimer of Liability

Although MCM has made good faith effort to insure the accuracy of the DOCUMENTS, it does not warrant that the DOCUMENTS are error-free. MCM disclaims any responsibility for the accuracy or adequacy of DOCUMENTS. In no event will MCM be liable for any consequential, incidental, or special damages, including but not limited to any losses, lost profits or lost savings, business interruptions, loss of business information, or any other pecuniary loss, even if an MCM representative has been advised of the possibility of such damage.

Use of Trademarks

Trademarks are used in the DOCUMENTS, in accordance with accepted trademark practices, for the purpose of identifying of the owners of the trademarks. Such use of a trademark shall not be understood to imply that the trademark's owner is the manufacturer of a product sold by MCM.

Notice of Copyright

The DOCUMENTS are owned by MCM, and their data, structure, organization, and computer codes are the valuable trade secrets of MCM. The DOCUMENTS are protected by copyright laws and international copyright treaties, as well as intellectual property laws and treaties. All title and copyrights in and to the DOCUMENTS (including, but not limited to, any computer code, data tables, images, photographs, or other visual or auditory media included in the DOCUMENTS) are owned by MCM. You must treat the DOCUMENTS just as you would any other copyrighted material. You may not copy the DOCUMENTS, except as set forth in this agreement.

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phone number

e-mail

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address 2

city, state zip

web site http://

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